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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA

5 v.

13 CR 340 (RJS)

6 STEPHEN BASCIANO

7 Defendant

8 -----x

9 New York, N.Y.
10 February 19, 2014
11 11:20 a.m.

12 Before:

13 HON. RICHARD J. SULLIVAN
14 District Judge

15 APPEARANCES

16 PREET BHARARA
17 United States Attorney for the
18 Southern District of New York
19 REBECCA MERMELSTEIN
20 Assistant United States Attorney

21 LAW OFFICES OF JOSHUA L. DRATEL PC
22 Attorney for Defendant Basciano
23 JOSHUA L. DRATEL

E2jQbasP

Plea

1 (In open court; case called)

2 THE DEPUTY CLERK: For United States?

3 MS. MERMELSTEIN: Good morning, your Honor. Rebecca
4 Mermelstein for the government.

5 THE COURT: Yes, Ms. Mermelstein, good morning.

6 For the defendant?

7 MR. DRATEL: Good morning, your Honor. Joshua Dratel
8 for Mr. Basciano, who is seated beside me.

9 THE COURT: Yes, Mr. Dratel. Good morning.

10 Mr. Basciano, good morning to you.

11 THE DEFENDANT: Good morning.

12 THE COURT: Do you need to finish up something?

13 MR. DRATEL: Just one more signature, your Honor.

14 THE COURT: Take your time.

15 MR. DRATEL: Ready, your Honor. Thank you.

16 THE COURT: Mr. Dratel, as I understand it,
17 Mr. Basciano wishes to withdraw his previously entered plea of
18 not guilty and plead guilty to Count One of the superseding
19 indictment S7 13 CR 340. Is that right?

20 MR. DRATEL: That's correct, your Honor.

21 THE COURT: Mr. Basciano, before I accept your guilty
22 plea, I am going to ask you some questions here in court. The
23 purpose of these questions is, first of all, to make sure you
24 understand your rights, the rights you have as a defendant in a
25 criminal case.

E2jQbasP

Plea

1 Second, it's to make sure you are pleading guilty
2 because you are guilty and not for some other reason.

3 As I ask you these questions, obviously, I want to
4 make sure you understand the questions before you try to answer
5 them. If I am not clear or if you are just not following me,
6 tell me.

7 THE DEFENDANT: OK.

8 THE COURT: I am going to rely on you to tell me if
9 you are having difficulty understanding me.

10 THE DEFENDANT: OK.

11 THE COURT: Don't answer a question if you don't
12 understand it.

13 THE DEFENDANT: OK.

14 THE COURT: If at any point you want to confer with
15 Mr. Dratel before you answer a question, take your time.

16 THE DEFENDANT: OK.

17 THE COURT: I will give you as much time as you need,
18 so don't feel rushed in any way.

19 THE DEFENDANT: OK.

20 THE COURT: In a minute I am going to ask you to take
21 an oath. I'm going to ask you to stand and raise your right
22 hand and swear that you are going to truthfully answer my
23 questions. If after taking that oath, you were to make false
24 statements, well, that would be a crime. That would be
25 perjury. I tell you that not to scare you, but just to remind

E2jQbasP

Plea

1 you that it's very important that you be truthful and accurate
2 and complete in your answers to me. All right?

3 THE DEFENDANT: I understand.

4 THE COURT: Any questions so far?

5 THE DEFENDANT: No.

6 THE COURT: Let me ask you to stand then and raise
7 your right hand.

8 (Defendant sworn)

9 THE COURT: Mr. Basciano, could you tell me your full
10 name?

11 THE DEFENDANT: Stephen Basciano. Stephen Paul
12 Basciano.

13 THE COURT: I'm saying Basciano, but it's Basciano?

14 THE DEFENDANT: Basciano.

15 THE COURT: How old are you, Mr. Basciano?

16 THE DEFENDANT: 29.

17 THE COURT: How far did you go in school?

18 THE DEFENDANT: I graduated.

19 THE COURT: From?

20 THE DEFENDANT: From high school.

21 THE COURT: From high school. Where was that; here in
22 New York?

23 THE DEFENDANT: Yeah, in Queens. Whitestone, Queens.

24 THE COURT: Are you now or have you recently been
25 under the care of a doctor or a psychiatrist?

E2jQbasP

Plea

1 THE DEFENDANT: I go to a doctor for anxiety.

2 THE COURT: For?

3 THE DEFENDANT: Anxiety.

4 THE COURT: Anxiety?

5 THE DEFENDANT: Yes.

6 THE COURT: How long have you been doing that?

7 THE DEFENDANT: It started about ten years ago, my
8 anxiety got better, and then I started going again about two
9 years ago.

10 THE COURT: Are you taking any medication for that?

11 THE DEFENDANT: I was taking Xanax, but now I'm not
12 taking nothing.

13 THE COURT: Nothing now. OK.

14 THE DEFENDANT: No.

15 THE COURT: Other than the anxiety treatments and the
16 Xanax, any other treatment or any other medicine that you've
17 been taking?

18 THE DEFENDANT: No.

19 THE COURT: Have you ever been hospitalized or treated
20 for any kind of mental illness or any kind of addiction,
21 including drug or alcohol addiction?

22 THE DEFENDANT: No, just anxiety.

23 THE COURT: In the last two days, have you taken any
24 medicine, taken any pills, any drugs, any alcohol, of any kind?

25 THE DEFENDANT: Tylenol.

E2jQbasP

Plea

1 THE COURT: Tylenol. So Tylenol I don't think affects
2 your memory or your judgment in any way?

3 THE DEFENDANT: No.

4 THE COURT: Right? Is your mind clear today?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you have an understanding of what's
7 going to take place here today?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: Mr. Dratel, do you have any doubt as to
10 Mr. Basciano's mental competence or his ability to enter an
11 informed plea?

12 MR. DRATEL: No, your Honor.

13 THE COURT: Ms. Mermelstein, do you have any such
14 doubts?

15 MS. MERMELSTEIN: No, your Honor.

16 THE COURT: Neither do I. I think based on
17 Mr. Basciano's answers to my questions so far, his demeanor,
18 his manner here in court today and previously, and based also
19 on the representations of the lawyers, I find Mr. Basciano is
20 fully competent to enter an informed plea.

21 Mr. Basciano, as I understand it, you wish to plead
22 guilty today. Is that correct?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you feel you've had enough time to
25 discuss this case with your attorney, Mr. Dratel?

E2jQbasP

Plea

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Do you feel you've had enough time to
3 discuss with him any defenses that you may have to these crimes
4 charged?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: Are you satisfied with Mr. Dratel's
7 representation of you?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. What I want to do now is I
10 want to describe for you important rights that you have under
11 the Constitution and laws of the United States. I am going to
12 do that in two ways: First, I am going to ask you about a
13 document called an Advice of Rights form.

14 Do you have that there, Mr. Dratel?

15 MR. DRATEL: Yes, I do, your Honor.

16 THE COURT: I am going to spend a few minutes going
17 over that with you, not in any great detail. Then I am going
18 to ask you questions here in court that cover a lot of the same
19 ground, not because I want to be repetitive, but just because
20 these rights are so important and your understanding of them is
21 so crucial, I don't want to leave anything to chance. So I
22 view this as kind of belt-and-suspenders approach.

23 If, as we are going through this, I ask you questions
24 your not sure about these rights or you yourself have some
25 questions about them, please don't be shy about saying so.

E2jQbasP

Plea

1 THE DEFENDANT: All right.

2 THE COURT: We're not in a hurry here. This is an
3 important day in your life. This is an important event. We
4 are going to do it right and very carefully.

5 THE DEFENDANT: Thank you.

6 THE COURT: All right? Let's start with that
7 document. It's a three-page document or a two-page document.
8 If you could turn to the second page. There's a signature
9 line. Is that your signature there, Mr. Basciano?

10 THE DEFENDANT: Yes, it is.

11 THE COURT: Before you signed that document, did you
12 read it?

13 THE DEFENDANT: Is this the one I had?

14 Yes. Yes, I read it.

15 THE COURT: Did you have an opportunity to discuss it
16 with your attorney, Mr. Dratel?

17 THE DEFENDANT: Yes.

18 THE COURT: That document and the rights described in
19 that document?

20 THE DEFENDANT: Yes.

21 THE COURT: Mr. Dratel, is that your signature on
22 there as well?

23 MR. DRATEL: It is, your Honor.

24 THE COURT: Before you signed it, you reviewed it with
25 your client?

E2jQbasP

Plea

1 MR. DRATEL: I did, your Honor.

2 THE COURT: And you answered any questions that he
3 might have had?

4 MR. DRATEL: I did.

5 THE COURT: Great. If you will, hand it up. I will
6 mark it as a Court Exhibit. I will call it Court Exhibit 1. I
7 will date and initial it.

8 As I said, Mr. Basciano, I'm going to ask you some
9 questions here in court about these same rights. The first
10 right, I'll guess we'll start with the most basic, is, you have
11 a right to a speedy and public trial by a jury for the charges
12 that are contained in this indictment. Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: If there were a trial, the government
15 would have to prove your guilt beyond a reasonable doubt. It's
16 a pretty high standard, beyond a reasonable doubt by competent
17 evidence. That would be the standard they would have to prove
18 before you could be found guilty. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: A jury of 12 people would have to agree
21 unanimously that you were guilty before you could be found
22 guilty at trial. Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: You would not have to prove that you were
25 innocent if you went to trial. Do you understand that?

E2jQbasP

Plea

1 THE DEFENDANT: No.

2 THE COURT: Well, I want to be sure you understand
3 that. Do you understand that you have no obligation to do
4 anything at trial. Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: If there were a trial, you could sit there
7 quietly and do nothing. You could sit and read the paper,
8 basically.

9 THE DEFENDANT: I understand.

10 THE COURT: But the burden would still be on the
11 government to prove its case beyond a reasonable doubt. Do you
12 understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: At trial and at every stage of your case,
15 you would be entitled to be represented by an attorney; and if
16 you couldn't afford an attorney, one would be appointed for you
17 at no cost to you. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: In this case, Mr. Dratel has been
20 appointed to represent you. Is that correct?

21 THE DEFENDANT: Yes.

22 THE COURT: You're not paying him any money?

23 THE DEFENDANT: No.

24 THE COURT: Mr. Dratel is part of a select group of
25 lawyers who are approved by the court to represent people who

E2jQbasP

Plea

1 don't otherwise have the ability to pay for an attorney. We
2 are very fortunate in this district to have excellent
3 attorneys, some of the very best any place who are willing to
4 serve on that panel. They get paid by the court, not a huge
5 amount, probably less than what they would normally get paid,
6 but they recognize it is an important thing to do, and they
7 will represent their clients zealously in these cases. So
8 we're fortunate to have lawyers like that.

9 Mr. Dratel is one of those lawyers. He will represent
10 you throughout this case. If you want to go to trial, he's
11 happy to do it. It doesn't matter to him whether you go to
12 trial or whether you plead guilty. Do you understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: OK. Now, if there were a trial in this
15 case, the witnesses for the government would have to come into
16 court, and they would have to testify here in your presence.
17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: If there were a trial, it would probably
20 be this courtroom or one like it, and the witness would come
21 right over here to this witness box so that you could see and
22 hear the witness as they testify. That is because you have a
23 right to confront your accusers. The Constitution says you get
24 that right. You would be able to see and hear the witness.
25 Then mr. Dratel would have an opportunity to cross-examine

E2jQbasP

Plea

1 those witnesses after the government had asked them questions.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: And Mr. Dratel could ask questions
5 designed to test whether they're telling the truth, to test
6 whether they have an accurate memory, to test whether they know
7 what they're talking about. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Mr. Dratel would also have the opportunity
10 to object to the government's evidence if he thought there was
11 a basis to keep it out of the trial. Do you understand that?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: Now, as I said before, you have no
14 obligation. You would have no obligation to do anything at a
15 trial. You certainly would have no obligation to put on any
16 evidence. But if you wanted to, you could. You could call
17 witnesses, and you could introduce exhibits on your own behalf.
18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: If there were witnesses that you wanted to
21 come into court and testify because you thought they had
22 something important to say, and they told you, "You know what?
23 Not a chance. I'm not coming to court. Good luck. I'm not
24 doing it." Well, that wouldn't be the end of it. You would
25 then have the ability to compel those people to make them come

E2jQbasP

Plea

1 to court or, I guess, I could make them come to court. You
2 could have subpoenas issued or other process used to make them
3 come here and testify truthfully under oath. Do you understand
4 that?

5 THE DEFENDANT: Yes.

6 THE COURT: You yourself could testify at trial if you
7 wanted to. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: You would have the right to do that. You
10 also would have the right, of course, not to testify. If you
11 chose not to testify, nobody could make you testify, and the
12 jury would not be allowed to attach any significance to the
13 fact that you chose not to testify. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: That's a really important principal in our
16 system of justice; not every country does it this way. We make
17 it clear that the defendant has no obligation to speak, and
18 that a jury can't attach any significance to the fact that they
19 choose not to testify. So I will tell the jury if there were a
20 trial, as I do in every case, that if the defendant chooses not
21 to testify, you can't hold it against him. You can't say, ahh,
22 you must be guilty because an innocent person would testify.
23 You can't do that. They can't count it at all. It doesn't
24 matter. It's an irrelevant fact. They would have to put to
25 the side. Do you understand that?

E2jQbasP

Plea

1 THE DEFENDANT: Yes, I do.

2 THE COURT: If there were a trial, and if the jury
3 then returned a guilty verdict against you, you would have the
4 right to appeal the jury's verdict. Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Above me sits a Court of Appeals, and you
7 could take the case to them after the trial if you didn't -- if
8 you were unhappy with the result in the trial. You could ask
9 the Court of Appeals to overturn the jury's verdict, to send it
10 back for a new trial or to reverse it completely. You would
11 have the right to make that appeal. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Even now, Mr. Basciano, as you are getting
14 ready to enter a guilty plea, you have the right to change your
15 mind. Do you understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: We have not yet crossed the point of no
18 return. We are getting pretty close, but we haven't gotten
19 there yet. So, if you were to tell me right now, "You know
20 what? I'd like to go to trial. I don't want to plead guilty."
21 That would be fine. I wouldn't be mad at you. Mr. Dratel
22 wouldn't be upset, and neither would Ms. Mermelstein. This is
23 your call. We all understand that this is your call. If you
24 want to go to trial we will respect that and we will schedule
25 the trial and go forward with the trial. Do you understand

E2jQbasP

Plea

1 that?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: Do you nevertheless want to go forward
4 with a guilty plea at this time? Do you want to go forward
5 with a guilty plea today?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: Do you understand that by pleading guilty,
8 you will be giving up your right to a trial?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: So, you will have waived that right. It
11 will be gone, along with all the other rights I just mentioned.
12 Do you understand that?

13 THE DEFENDANT: I understand.

14 THE COURT: The only exception would be your right to
15 counsel; that would continue. Mr. Dratel will continue to
16 represent you. Even if there is no trial, he will represent
17 you. He will represent you today at the plea and through
18 sentencing, and even through an appeal if there were an appeal.
19 That right would continue.

20 The other right, I guess, that would continue is your
21 right to appeal might continue; it might continue to some
22 extent, but you almost certainly wouldn't be able to appeal
23 whether or not you committed the crime if you plead guilty.
24 You generally can't plead guilty and then say to the Court of
25 Appeals, "I was just kidding. I had my fingers crossed. I

E2jQbasP

Plea

1 didn't really do it. I didn't mean what I said." That would
2 be probably something you couldn't appeal. All the other
3 rights would be waived outright. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: You should also know that by pleading
6 guilty, that means I will sentence you on the basis of your
7 guilty plea. Not today but ultimately the sentence that I
8 impose will be based on the fact that you pled guilty to this
9 crime. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: You should also understand that before I
12 will accept your guilty plea, I am going to ask you to tell me
13 in your own words what it is that you did that makes you guilty
14 of this crime. I am going to ask you that to make sure that I
15 can be confident you are pleading guilty because you are guilty
16 and not for some other reason. Basically you'll be giving up
17 your right not to incriminate yourself once you tell me that.

18 So that is kind of a big deal. I want to be sure you
19 understand that, as I said before, no one can make you testify,
20 no one can make you speak in court. As a condition of going
21 forward with the guilty plea, I'm going to ask you to tell me
22 what you did. Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you willing to do that?

25 THE DEFENDANT: Yes.

E2jQbasP

Plea

1 THE COURT: Do you have any questions about any of
2 these rights that we have discussed?

3 THE DEFENDANT: No, I don't.

4 THE COURT: You are willing to give up your right to a
5 trial and all the other rights I just mentioned?

6 THE DEFENDANT: Yes.

7 THE COURT: Let's talk a little bit about the crime
8 charged. You've been charged in an indictment. You've read
9 the indictment. You told me that, right?

10 THE DEFENDANT: Yes.

11 THE COURT: And the indictment charges you with
12 participating in a conspiracy to distribute marijuana? Do you
13 understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: And so the crime of conspiracy is a crime
16 of agreeing with others to commit a crime. You don't have to
17 actually carry out the crime. The agreement itself is the
18 crime. But you've been charged with participating in a
19 conspiracy to distribute a thousand kilograms or more of
20 marijuana; but according to the plea agreement, you are going
21 to be allowed to plea to a lesser included offense, which
22 charges you with conspiring or agreeing with others to
23 distribute more than 50 kilograms or more than 140 pounds of
24 marijuana. Do you understand that?

25 THE DEFENDANT: Yeah.

E2jQbasP

Plea

1 THE COURT: I am going to ask now Ms. Mermelstein to
2 summarize the element of this crime. When I say the elements,
3 I mean the requirements. These are things a jury would have to
4 find beyond a reasonable doubt before you could be found
5 guilty. These are the things I will have to be confident could
6 be demonstrated before I could accept the guilty plea. All the
7 elements sound technical, but are pretty straightforward, so
8 listen to Ms. Mermelstein carefully. If when she has finished,
9 you have any questions about these elements, let me know. We
10 can chat about it a little more.

11 Ms. Mermelstein, nice and loud because the acoustics
12 are so bad in here.

13 MS. MERMELSTEIN: The elements are: First, the
14 existence of an unlawful agreement. Here, to distribute
15 marijuana.

16 Second, the defendant knowingly became a member of
17 that agreement.

18 And, third, certain penalties will apply if the
19 government proves that the conspiracy involved 50 kilograms or
20 more of marijuana.

21 THE COURT: That means there is a 20 year maximum.

22 MS. MERMELSTEIN: That's right, and the supervised
23 release, I think.

24 THE COURT: Yes. I will go through the penalties in a
25 moment. You heard what Ms. Mermelstein said could you hear

E2jQbasP

Plea

1 her, Mr. Basciano?

2 THE DEFENDANT: Yes.

3 THE COURT: The elements of this crime are pretty
4 straightforward. One, the government would have to prove that
5 this agreement existed. There was an agreement involving two
6 or more people to violate the narcotics laws as they relate to
7 marijuana.

8 The second element would be that you yourself
9 knowingly joined that conspiracy, understanding the illegal
10 nature of the conspiracy or the object of the conspiracy.
11 Those are the two elements.

12 In addition to that, the government would also have to
13 prove something else called venue. Have you heard about venue?
14 Do you know what that is?

15 THE DEFENDANT: No.

16 THE COURT: I don't know why we still use that word.
17 It's the word we still use. It's derived from a Latin word.

18 Venue refers to the fact that some part of the crime
19 has to have occurred here. The United States is divided up
20 into 94 -- I think it's 94 different districts. This district
21 is one of those. It's the Southern District of New York. It
22 covers Manhattan, the Bronx, Westchester, Rockland, Putnam,
23 Dutchess, a couple other counties around there.

24 Some part of the crime has to have occurred here in
25 this district. It doesn't have to have been you that did

E2jQbasP

Plea

1 something here. As long as one of the members of the
2 conspiracy did some act in this district, that would be
3 sufficient.

4 If all of it took place in California, then you
5 couldn't be prosecuted here, and you couldn't be found guilty
6 here; but as long as one act took place here, it would be
7 sufficient even if it wasn't you who committed the act here.

8 For venue, the government doesn't have to prove that
9 beyond a reasonable doubt. They just have to prove it by a
10 preponderance, which means the greater weight of the evidence.
11 So, as long as it's more likely than not that some act occurred
12 here, that would be enough for the jury to find that there was
13 venue here.

14 For the other two elements that I mentioned, that
15 would have to be found beyond a reasonable doubt, which is a
16 much higher standard. OK? Do you understand that?

17 THE DEFENDANT: Yeah.

18 THE COURT: Any questions about those elements?

19 THE DEFENDANT: No.

20 THE COURT: Any questions about venue?

21 THE DEFENDANT: No.

22 THE COURT: OK. What I want to do now is spend a
23 minute or two talking about the penalties you face for this
24 crime. This crime carries a maximum term of imprisonment of 20
25 years. It also carries a maximum term of supervised release of

E2jQbasP

Plea

1 life. Supervised release is basically that you would be
2 supervised after you are released from jail?

3 THE DEFENDANT: Yes.

4 THE COURT: So, you would be sentenced. You serve
5 your sentence, you would come home, and then you would be
6 supervised for a period of time by the probation department.
7 That is supervised release. The maximum term of supervised
8 release the maximum is life. The mandatory minimum term of
9 supervised release is three years. I couldn't give you less
10 than that even if I wished to.

11 In addition, I can also order that as part of your
12 sentence a fine, which includes -- the maximum fine would be
13 the greatest of either a million dollars or twice the gross
14 gain that was derived from this crime or twice the gross loss
15 to persons other than yourself that resulted from the crimes.
16 So, whichever of those three is the greatest, that's the
17 maximum fine.

18 In addition to a fine, I can also order that you pay
19 restitution to any person that was injured as a result of this
20 crime. I don't know if that would apply here, but sometimes it
21 does. That's separate from a fine. So, if somebody got shot
22 or took drugs and is now in a wheelchair, I could order you to
23 pay that person so they would be compensated for being in a
24 wheelchair. That would be separate from a fine.

25 In addition, I can also order that you forfeit any of

E2jQbasP

Plea

1 the profit or any of the proceeds that were derived from this
2 crime. So, whatever money was made by you or others during the
3 course of this crime, I could order you to forfeit that money
4 back. If you've already spent that money, I can order that you
5 forfeit substitute assets, other money that you have or will
6 have in the future. That's to make sure that nobody profits
7 from the crime. So, that's part of the sentence as well.

8 That would also include any property that was used to
9 carry out the crime. So, if you drove drugs from point A to
10 point B, I can order you to forfeit the car because the car was
11 used to facilitate the crime. That's forfeiture. It's
12 separate from a fine and separate from restitution.

13 Finally, there is a \$100 special assessment. That's
14 mandatory. It has to be paid. That's in addition to any fine,
15 any forfeiture or any restitution. So, those are the maximum
16 penalties you face.

17 Any questions about those?

18 THE DEFENDANT: No.

19 THE COURT: A couple of other things about sentencing.
20 First of all, you are an American citizen, correct?

21 THE DEFENDANT: Yes.

22 THE COURT: So, as a result of this conviction, you
23 could lose certain valuable civil rights. You could lose your
24 vote, your right to serve on a jury, your right to hold public,
25 office, your right to possess a firearm. Do you understand

E2jQbasP

Plea

1 that?

2 THE DEFENDANT: Yes.

3 THE COURT: You should also understand that in
4 connection with supervised release, the way that works is that
5 if while you were on supervised release, you were to violate
6 any of the terms and conditions of supervised release, well,
7 then I could send you back to jail for the full term of
8 supervised release. You wouldn't get credit for the time you'd
9 already served on supervised release. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: So, I think this is an important point, so
12 I just want to make sure you understand.

13 As I said before, supervised release is something that
14 happens after you're released from jail. I have to give you at
15 least three years of supervised release.

16 So, assume for this example that I give you three
17 years. You come out of jail; you come home. You're living at
18 home. You're now supervised for three years by probation.
19 There would be conditions associated with that; among other
20 things, that you not commit any more crimes; that you not use
21 or possess drugs of any kind; that you not use or carry a
22 firearm. There will be other things as well, but at least
23 those.

24 Let's imagine for two years and eleven months, you
25 were perfect, you did everything you were supposed to do on

E2jQbasP

Plea

1 supervised release; and then in the last month of the last
2 year, you commit another crime or you possessed a gun or you
3 used drugs. I could, under this hypothetical, revoke your
4 supervised release, send you back to jail for three years, a
5 full term of supervised release, and you would not get credit
6 for the two years and eleven months where you had been perfect.
7 I want to make sure you understand that.

8 THE DEFENDANT: I understand that.

9 THE COURT: I don't know that I would do that, but I
10 certainly could do that.

11 THE DEFENDANT: I understand that.

12 THE COURT: OK. Parole is something that is a term
13 that you've probably heard the term parole?

14 THE DEFENDANT: Yes.

15 THE COURT: Parole is not part of the federal criminal
16 justice system. New York State has parole. New Jersey has
17 parole. Other states have parole. The way parole typically
18 works in those places is, the judge would impose a sentence,
19 and then the defendant while serving the sentence might be let
20 out earlier because the parole board has decided this person is
21 a good bet. It seems like they've made a good adjustment.
22 They're ready to come out.

23 That's not part of the federal system. So, whatever
24 sentence I impose, that is the sentence you will serve. Do you
25 understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: The only exception to that is you could
3 get a certain amount of time off for good behavior. The amount
4 of time off would not be more than 15 percent of the total
5 sentence, and the decision as to what constituted good behavior
6 would be up to the Bureau of Prisons; not up to me. OK? Do
7 you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Any questions about that?

10 THE DEFENDANT: About the post release and the
11 parole--

12 THE COURT: Yes.

13 THE DEFENDANT: Do I get both of them or just one of
14 them?

15 THE COURT: There is no parole. So, remember about
16 that. Parole exists in some of the state court systems, but
17 not in the federal. That is the way a judge that -- a parole
18 board or state can let somebody out sooner. Even though the
19 Judge said 10 to 20, they can get out earlier. Here, whatever
20 sentence I give you, if I give you three years, you'll do three
21 years. If I give you five years, you'll do five years. You
22 could get 15 percent off for good behavior but not more than
23 that, and the decision as to whether you demonstrated good
24 behavior would be up to the Bureau of Prisons; not up to me.

25 THE DEFENDANT: OK. I understand.

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1 THE COURT: Supervised release is when you get out.
2 You're home; living at home; hopefully, leading a healthy and
3 happy life. Supervised release is a way that probation is
4 available to you because probation works for me, and they are
5 there to make sure you are not getting into trouble and to help
6 you stay on a good path and to make sure that you are getting
7 your life on track.

8 THE DEFENDANT: OK.

9 THE COURT: So, it's there to help you.

10 THE DEFENDANT: Yeah.

11 THE COURT: But it can be sometimes onerous because
12 you'll have to pee in a cup once in awhile.

13 THE DEFENDANT: Yeah.

14 THE COURT: You know, and you'll have to have the
15 probation officer come by and make a visit every once in awhile
16 unannounced, and you'll have to go to probation once in a
17 while, which is going to be a drag, but that's going to be
18 life. But the purpose is to be sure you are progressing.

19 THE DEFENDANT: Yeah.

20 THE COURT: And the person who is really doing great
21 can sometimes be released early from supervised release because
22 when the probation officer says, "No, this guy gets it. He's
23 totally on board. We don't need to do this any more," that's
24 always a good thing. That's what I hope happens. But that is
25 supervised release. OK? Did that answer your question?

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1 THE DEFENDANT: Yes, it did.

2 THE COURT: Great.

3 Are you serving any other sentences right now?

4 THE DEFENDANT: No, I'm not.

5 THE COURT: No other state or other sentence?

6 THE DEFENDANT: No.

7 THE COURT: A couple other things about sentencing. I
8 will decide what sentence you get. Nobody else. I will be the
9 one who decides. I'm not going to do that today. I will do
10 that in a few months. But no matter what anybody else has told
11 you; if they've predicted what sentence you're going to get or
12 they've told you definitively what you're going to get, don't
13 count on it. Nobody can tell you that because I am the only
14 one who knows what sentence you will get, and I don't know even
15 know at this point. OK?

16 Another thing I want to make sure you understand
17 though is that there are certain factors I have to consider in
18 deciding what sentence to impose. Congress has passed a law
19 that says judges have to consider a bunch of things. I am
20 required to consider these things. I would anyway, candidly,
21 but these are the things I will consider in deciding an
22 appropriate sentence.

23 First of all, I will consider your own personal
24 history. You're 29. You're a young guy. Still, I have to
25 look at your whole life; everything that you've done, you know,

E2jQbasP

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1 who you are at this point. So, I will look from your childhood
2 to your school history and record. I'll look at your work
3 history, your criminal history. I'll look at your family
4 circumstances today. I will look at some other things. I will
5 look at the decisions you've made in life -- the good things
6 you've done and the bad things you've done because I have to
7 impose a sentence on you. You're unique. And I have to tailor
8 a sentence to you as a person. So I will look carefully at who
9 you are.

10 I also have to consider, of course, the facts and
11 circumstances of this crime. This is a serious crime. I have
12 to make sure that the sentence I impose reflects the
13 seriousness of the crime, and that it also promotes respect for
14 the law so that people realize, hey, you can't just violate the
15 law. Also, I want to make sure the sentence I impose is a just
16 punishment for the crime that was committed.

17 I am going to look very carefully at facts and
18 circumstances of this crime; not just what it's called, but
19 what went on here, what you did, what others did, for how long
20 a period of time, you know, what amount of drugs was involved,
21 what role you played, whether there was any violence, all of
22 that I am going to look at carefully because all of that
23 affects just how serious this crime was, and I have to make
24 sure the sentence reflects the seriousness of the crime.

25 Another factor Congress says I must consider is the

E2jQbasP

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1 need to deter or discourage you and others from committing
2 crimes in the future. If you think of it this way, the notion
3 there is that by imposing a sentence on you, I will be sending
4 a message: A message to you and a message perhaps to other
5 people. The hope is that the message gets sent and received
6 and internalized so that there is less crime in the future.
7 You will say, "I can't be doing in any more. I don't want to
8 go to jail any more." And if that is the cost of committing
9 crimes, I'm just not going to commit crimes. And the hope is
10 that other people will say "I saw what happened to
11 Mr. Basciano, and I was thinking of maybe making a few bucks,
12 but its's not worth it, so I'm not going to commit that crime
13 either." The hope is that there will be fewer people
14 committing these crimes in the future, and we will have less
15 crime. That's the hope.

16 It's hard to know. Again, it's hard to predict with
17 precision what exactly the impact of sentence will be on future
18 crime, but I think most of us know there is something to that.
19 It's plausible. And it's something that courts for thousands
20 of years, I think, have tried to consider and make part of
21 their sentence. So that is something I will consider.

22 Another thing I have to consider are your own needs
23 while you're in custody, Mr. Basciano. So, for example, you've
24 had anxiety issues. So I will make sure that that is something
25 that can be treated while you're in jail.

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1 THE DEFENDANT: Thank you.

2 THE COURT: Other defendants sometimes have serious
3 mental health problems or some have serious addiction problems,
4 and they need to have those problems addressed. Some have
5 serious physical problems. They're in wheelchairs, they have
6 cancer, and we have to make sure they're sentenced to places
7 that can deal with those issues. That's important too. I will
8 take that into account. A very important factor I have to
9 consider is something called the United States Sentencing
10 Guidelines. I'm holding up this book. You've heard of the
11 sentencing guidelines?

12 THE DEFENDANT: Yes.

13 MR. DRATEL: I'm sure Mr. Dratel has told you about
14 them. This book is a big book. It's about 500 pages long, so
15 I'm not going to go into it in detail; but the point is this:
16 There is a commission that issues this book. It issues a new
17 addition each year. That commission is made up you lawyers,
18 judges and other experts in the field. This book is designed
19 to give guidance to me, to judges like me.

20 So, for every crime or type of crime, there is a
21 chapter in this book. The judge is directed to go to the
22 relevant chapter and make findings of fact. In this case, I'd
23 go to the chapter that is drug offenses. I would make findings
24 as to what type of drug was involved. In this case. It's
25 marijuana. Marijuana is generally considered less serious than

E2jQbasP

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1 heroin or crack cocaine or methamphetamine. So, I will make a
2 finding as to the type of drug.

3 I will make a finding as to the amount of drug
4 because, obviously, a lot of drugs are generally more dangerous
5 and more harmful than a small amount of drugs. So, depending
6 on the amount of drugs that I find, I will assign points. This
7 amount of marijuana will get this number of points according to
8 this book.

9 I will then make findings as to whether you played a
10 role in this that was a leadership role, in which case I'll add
11 points or maybe you had a minor role, in which case I would
12 subtract points. If there were guns involved, I would add
13 points.

14 Anyway, I will go through this process of adding and
15 subtracting, and I will come up with a number. That number is
16 what's referred to as the offense level.

17 I will then go to a different chapter in the book that
18 relates to criminal history. Not surprisingly, people who have
19 previously committed crimes are generally going to be treated
20 more harshly than people who have no prior record. I will look
21 to see if you have prior convictions. If so, when they were.
22 If you do have prior convictions, I will look to see how long
23 the sentence was. Based on those findings, I will add points
24 and come up with another number. That number is called the
25 Criminal History Category.

E2jQbasP

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1 There are six categories, Category I is the lowest and
2 least serious. Category VI is the highest and most serious. I
3 will then take those two numbers I found: The offense level on
4 one hand and the Criminal History Category on the other, and
5 then I will go to the back of this book where there is a chart
6 or a table, and I will go down the grid. I'll go down this
7 column here, which is the offense level. Then I will go across
8 till I find the right criminal history category. Where the two
9 intersect, that is the spot that according to the commission
10 that writes this book says is the proper range for you to be
11 sentenced. There are ranges in terms months laid out in here.

12 I will consider that and I will make my findings as to
13 what the guidelines call for in the case. I am ultimately free
14 to disregard the guidelines. I can go higher or lower than the
15 range they prescribed. But I have to go through the exercise
16 of making my findings, deciding the offense level, deciding the
17 criminal history category and deciding what the range is. If I
18 want to go higher or lower, I can, and I will explain myself.
19 OK?

20 THE DEFENDANT: Yes.

21 THE COURT: Any questions about the guidelines in this
22 book?

23 THE DEFENDANT: No, not -- I have no questions.

24 THE COURT: I'm sure Mr. Dratel was pretty thorough on
25 this, but it can be complicated, sort of like accounting, but

E2jQbasP

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1 it's generally pretty straightforward.

2 THE DEFENDANT: I have one question.

3 THE COURT: Sure.

4 THE DEFENDANT: I heard -- I don't know if it's a
5 rumor or not -- is there supposed to be a guideline change?

6 THE COURT: Well, there are sometimes changes every
7 year, but with respect to marijuana?

8 THE DEFENDANT: No, with anything. I don't know if
9 it's just a rumor that they're supposed to fix the guidelines a
10 little bit or is that just a rumor?

11 THE COURT: Well, I don't know specifically what
12 you've heard, but every year the commission takes testimony.
13 They listen to people. They consider whether they should amend
14 certain guidelines. So, they may be considering making some
15 changes, but I will sentence you based on the book that's in
16 effect at the time of your sentencing. So it will be this one.

17 THE DEFENDANT: OK.

18 THE COURT: It will be the red cover; probably not
19 this one, which was last year's version. I don't think there
20 has been any meaningful change between last year and this year
21 with respect to marijuana.

22 THE DEFENDANT: OK.

23 THE COURT: If something changes, then we will deal
24 with it at the time. OK?

25 THE DEFENDANT: OK.

E2jQbasP

Plea

1 THE COURT: Any other questions about any other
2 sentencing factors?

3 THE DEFENDANT: No.

4 THE COURT: I guess the last point I want to make is
5 whatever sentence I impose, Mr. Basciano, even if you are
6 unhappy with it, you won't be able to withdraw your guilty plea
7 at that point. Do you understand that?

8 THE DEFENDANT: Yes, I understand.

9 THE COURT: I said before that we haven't yet crossed
10 the point of no return, which is true; but once you've pled
11 guilty, and once I've accepted your guilty plea, you can't
12 ordinarily say, "I've changed my mind, I'd like to go back and
13 go to trial." And, certainly, you won't be able to wait until
14 after I've sentenced you to say, "Oh, boy, that's more than I
15 bargained for. Let's do this over." That's not going to be an
16 option. Do you understand that?

17 THE DEFENDANT: I understand.

18 THE COURT: I want to take a minute now to talk about
19 the plea agreement in this case. I have a draft agreement
20 which is dated February 10 of this year. It's a six-page
21 document, signed by Ms. Mermelstein and her supervisor. It's
22 addressed to Mr. Dratel. Do you have the original?

23 MR. DRATEL: I have the original.

24 THE COURT: Keep it there. I'm going to ask some
25 questions about it. Thanks. If you could turn to the last

E2jQbasP

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1 page of that agreement, there is a signature line there at the
2 very bottom. Is that your signature there, Mr. Basciano?

3 THE DEFENDANT: Yes, it is.

4 THE COURT: Before you signed this agreement, did you
5 read it?

6 THE DEFENDANT: Yes, I did.

7 THE COURT: Did you discuss it with Mr. Dratel?

8 THE DEFENDANT: Yes, I did.

9 THE COURT: Did you have a full opportunity to discuss
10 with him this agreement and what it means in your case?

11 THE DEFENDANT: Yes, I did.

12 THE COURT: Did you ask Mr. Dratel any questions that
13 you may have had?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Dratel, is that your signature below
16 Mr. Basciano's?

17 MR. DRATEL: Yes, your Honor.

18 THE COURT: Before you signed it, did you read it with
19 your client?

20 MR. DRATEL: Yes I did.

21 THE COURT: You were able to answer any questions he
22 may have had?

23 MR. DRATEL: Yes.

24 THE COURT: If you could hand that up, I will mark it
25 as Court Exhibit 2. I will initial and date it. I generally

E2jQbasP

Plea

1 give the original back to the government, but if you folks have
2 a different arrangement, that's fine with me. This way there
3 will be no dispute as to what document we were talking about in
4 case there is ever a question about that.

5 Mr. Basciano, I am not going to go over this in great
6 detail. It's six pages single-spaced; not nearly as long as
7 this thing, the guidelines, but it's still pretty long. There
8 are a couple of features of this I want to make sure you
9 understand. This agreement is an agreement between and you the
10 government. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: So, you have obligations under this
13 agreement and so does the government. It's like a contract of
14 sorts. I am not a part of this agreement. I didn't sign it.
15 I didn't negotiate it. And I'm not bound by it. Do you
16 understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: There may be things in this agreement that
19 I don't agree with; that I would come to a different
20 conclusion. If that is the case, then I have an obligation to
21 follow my own view as to what the facts are and what the law
22 is. Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: One of the features of this agreement is
25 that you agree -- you and the government agree as to how the

E2jQbasP

Plea

1 Sentencing Guidelines apply in this case? Do you understand
2 that?

3 THE DEFENDANT: I didn't hear that. What was that?

4 THE COURT: There is a part of this agreement that
5 sets forth the view of the government and you as to how these
6 Sentencing Guidelines apply in this case. You're aware of
7 that?

8 THE DEFENDANT: Yes.

9 THE COURT: According to the agreement, the offense
10 level is 21, and the criminal history category is Category III.
11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Based on those agreements, there is an
14 agreement that the range, according to this book is 46 to 57
15 months imprisonment. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: That might be the agreement you have
18 reached with the government, but, again, I'm not bound by that.
19 So I may reach a different conclusion. I may find that the
20 guidelines are higher, I may find that they're or lower, or
21 whatever the guidelines, I may decide that a different sentence
22 is appropriate. Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Part of this agreement also says if I
25 sentence you to 57 months imprisonment or anything less than,

E2jQbasP

Plea

1 that you will give up your right to appeal the sentence or
2 challenge the sentence. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: So, it may not be that you're happy with
5 the sentence; that you're hoping for less; but if I sentence
6 you to 57 months, which is just a shade under five years or
7 anything less than that, you won't be able to appeal the
8 sentence. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: There is also part of this agreement that
11 says you agree to forfeit the proceeds from this crime. Do you
12 understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: I think it says \$600,000 is the total
15 forfeiture amount. Is that right? Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, is there any agreement besides this
18 one in a exists between you and the government?

19 THE DEFENDANT: No.

20 THE COURT: Has anything been left out of this
21 agreement? Is there any understanding that you have with the
22 government that isn't contained in that agreement?

23 THE DEFENDANT: No.

24 THE COURT: Has anyone threatened you or promised you
25 something of value in exchange for signing that agreement?

E2jQbasP

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1 THE DEFENDANT: No.

2 THE COURT: Has anyone threatened you or promised you
3 something of value in exchange for pleading guilty here today?

4 THE DEFENDANT: No.

5 THE COURT: Mr. Dratel, is there any defense that you
6 can think of that would prevail as a matter of law or any other
7 reason why Mr. Basciano should not be allowed to plead guilty
8 today?

9 MR. DRATEL: No, your Honor.

10 THE COURT: Mr. Basciano, at this point I want you to
11 tell me in your own words what it is that you did that makes
12 you guilty of this crime.

13 THE DEFENDANT: I sold marijuana with others and --
14 that was a mistake pretty much I made, I sold marijuana to
15 others.

16 THE COURT: When was this, approximately?

17 THE DEFENDANT: That was 2012, the beginning of 2012.

18 THE COURT: Where did this take place?

19 THE DEFENDANT: In the Bronx.

20 THE COURT: In the Bronx, OK.

21 And the amount of marijuana involved in this
22 conspiracy, in this agreement, was it more than 50 kilograms
23 which is about 140 pounds?

24 THE DEFENDANT: I would say, honestly, a little bit
25 less, but, yeah, it was somewhere around there. It was a

E2jQbasP

Plea

1 hundred to 120 pounds, 130 pounds, hundred 230 pounds.

2 THE COURT: So, that could have an impact on the
3 sentence just because there's a 50-kilogram threshold for some
4 of the penalties that you face here?

5 THE DEFENDANT: I don't know the exact what it was,
6 but it was somewhere around 70, 80, a hundred, somewhere around
7 there.

8 THE COURT: All right. When you did this stuff, did
9 you know what you were doing was wrong and illegal?

10 THE DEFENDANT: Yes, I did.

11 THE COURT: You did. OK. All right. Other than the
12 weight allocution which could have some implications i,s that a
13 satisfactory allocution, Ms. Mermelstein?

14 MS. MERMELSTEIN: Yes, your Honor.

15 THE COURT: Mr. Dratel?

16 MR. DRATEL: Yes, your Honor.

17 THE COURT: So, let me hear now from the government
18 particularly with respect to weight because that could be an
19 issue, it seems to me, with respect to sentencing.

20 MS. MERMELSTEIN: If this case proceeded to trial, the
21 government would prove through cooperating witness testimony,
22 other witness testimony, seized marijuana and consensually
23 recorded calls and in person conversations his with the
24 defendant himself, that from approximately 2012 to
25 approximately April of 2013 the defendant agreed with others to

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1 purchase marijuana which had been shipped from California to
2 the New York area for sale in a marijuana route that was run in
3 the Bronx. In particular, he purchased that marijuana from
4 Salvatore Larca to Anthony @Soquillo. The government has
5 witnesses who would testify based on personal knowledge that
6 this defendant personally purchased at least 50 kilos of
7 marijuana from the conspiracy, and that the conspiracy itself
8 involved more than that. I will just note a mathematical
9 error. I think 50 kilos is 110.

10 THE COURT: It's 2.2.

11 MS. MERMELSTEIN: So to the extent that solves the
12 amount of the discrepancy. I don't know if it does for the
13 defendant, but I think he only has to allocute that it was.

14 THE COURT: So, 110 pounds is that about right?

15 THE DEFENDANT: Yeah, somewhere around that range.
16 Yes.

17 THE COURT: So you're not certain, but you think it is
18 in that neighborhood?

19 THE DEFENDANT: To be honest with you, I thought it
20 was a little bit less, but, yes, your Honor.

21 THE COURT: So Jimmy Carter would be unhappy with my
22 math. All right.

23 OK. So at this point then let me understand. OK
24 Mr. Basciano? I am going to ask you now to stand. How do you
25 now plead to Count One of the superseding indictment? Guilty

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1 or not guilty.

2 THE DEFENDANT: Guilty.

3 THE COURT: Did you do the things you're charged with
4 doing in the indictment?

5 THE DEFENDANT: Yes.

6 THE COURT: Are you pleading guilty because you are
7 guilty?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Are you pleading guilty voluntarily and of
10 your own free will?

11 THE DEFENDANT: Yes.

12 THE COURT: Mr. Basciano because you acknowledge you
13 are guilty as charged in Count One, because you know your
14 rights and have waived those rights, because your plea is
15 entered knowingly and voluntarily and is supported by an
16 independent basis in fact for each of the elements of the
17 crime, I accept your guilty plea and I adjudge you guilty on
18 Count One.

19 Have a seat. What we are going to talk about now, we
20 are going to now set a date for sentencing, which generally I
21 set those about four months out. That is to allow the
22 probation department to prepare a report, PSR or a presentence
23 report. That report can be pretty lengthy. That can be
24 sometimes 20, 30, 40 pages long, single-spaced. It's really to
25 help me decide an appropriate sentence. So I want to give them

E2jQbasP

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1 time to prepare that report. So, Chris, what time?

2 THE DEPUTY CLERK: 3:00 p.m. on June 20.

3 THE COURT: I will need more than an hour. There is
4 other one is at 2:00?

5 THE DEPUTY CLERK: Yes.

6 THE COURT: In the morning or no? How about Friday,
7 the 27th? Is that all right? 10:00 in the morning.

8 MR. DRATEL: 10:00 a.m.?

9 THE COURT: Yes, 10:00 a.m. on Friday, June 27.

10 So, in the interim between now and then, what is going
11 to happen, Mr. Basciano, is the probation department is going
12 prepare this report. Once they do -- well, I will tell you,
13 they are going to get information for this report by talking to
14 a lot of people and by reviewing a lot of documents. Among the
15 people they interview will be you.

16 Mr. Dratel, I assume you want to be present for any
17 interview?

18 MR. DRATEL: I do, your Honor.

19 THE COURT: So, I will direct no interview will take
20 place unless Mr. Dratel is present.

21 During that interview, Mr. Basciano, I expect you will
22 be truthful and complete in your answers to the probation
23 department. If you were to make any false statements to
24 probation, well, that would be a separate crime. That would be
25 punishable by separate penalties, and also could be an

E2jQbasP

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1 enhancement under the guidelines of this case for obstruction
2 of justice, which means the guidelines will go up, which would
3 not be in anyone's interest.

4 Again, I don't say that to scare you; just so you're
5 mindful to be truthful and complete in all your answers to the
6 probation department.

7 Once the report is finished, you will get a draft.
8 Probation will send you a draft, they will send your lawyer and
9 the government's lawyer a draft. Read it carefully. If there
10 are parts of the draft that you disagree with, tell Mr. Dratel.
11 He will then contact probation and say, "Hey, we disagree with
12 this, that and the other." Probation will issue a final report
13 after that. The final report might incorporate the changes
14 that Mr. Dratel pointed out; perhaps not. In any event, once
15 you get the final report -- that is the first one I will get --
16 you will get a copy as well. Read it carefully. If there are
17 parts of it you disagree with, talk to Mr. Dratel. Mr. Dratel,
18 if there are parts you disagree with, will then make objections
19 formally to me. Ms. Mermelstein will have the same
20 opportunity.

21 If there are objections to the report or portions of
22 the report, then I will resolve those disputes. We will either
23 have like a mini-trial with witnesses, and then I will make
24 findings of fact, or it may be that the dispute is not so much
25 over what the facts are but what the inferences or conclusions

E2jQbasP

Plea

1 are to be drawn from those facts. So, if that is the case,
2 then perhaps there should be argument from the lawyers, and
3 then I will resolve it after the argument.

4 I suppose the third alternative is that there might be
5 an objection, but it is about something that I just think is
6 trivial that won't matter and that won't affect the sentence so
7 I won't need to resolve it, and I will say we can put that to
8 one side, we don't have to deal with it. In any event, if
9 there are objections, I will resolve them or I will tell you
10 what I am doing with them.

11 In addition to the presentence report, I will also
12 review any submissions from the parties. So, Mr. Dratel, I am
13 sure, will be making a submission on your behalf, indicating
14 his view as to what the proper sentence should be and why.
15 Ms. Mermelstein will have the same opportunity. I suspect the
16 government will make a submission also. I will read those
17 carefully, of course.

18 In addition to those, I am happy to read letters or
19 submissions from anybody else. I don't know you well,
20 Mr. Basciano. I've only seen you a couple times. So,
21 sometimes defendants think it's useful to have friends, family
22 members or the defendant himself write a letter to the court to
23 give me a better sense of you as a person. So, I certainly
24 read the letters and I find they can be quite useful. If that
25 is something you'd like to do, you are certainly welcome to do

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1 that. The only thing I would ask is that if you, your friends
2 or relatives wish to write letters to me, have them go to
3 Mr. Dratel first. Send him all the letters. He will collect
4 them. He will make them part of his attachments, and I will
5 get them all at once, so I can be confident nothing has slipped
6 through the cracks.

7 I promise I will read them, I always do, more than
8 once, in fact, because they're important.

9 We will then come in here on June 27, sentencing day,
10 and at that time we will go over the presentence report with
11 your objections, which I will resolve. I will then make my
12 findings under the guidelines. I will tell you what range I
13 come up with. After that, I will listen to the lawyers. I
14 will give them a chance to speak about what would be an
15 appropriate sentence. Once they have finished, I will give you
16 an appropriate to speak if you would like to. You are not
17 required to but you are very welcome to and you have a right to
18 speak if you's like, so I will give you that chance.

19 After all of that, then I will tell you the sentence
20 that I intend to impose. I will then explain my reasons for
21 it. I will then check with the lawyers to make sure that I
22 haven't done anything illegal; and assuming that I haven't,
23 then I will formally impose the sentence. That is how it will
24 work. OK?

25 THE DEFENDANT: OK.

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1 THE COURT: Any questions about that process?

2 THE DEFENDANT: No.

3 THE COURT: In the meantime, you are going to remain
4 in custody, but you will get credit for the time between now
5 and June and will count toward whatever sentence I impose.

6 So, stay in touch with Mr. Dratel. If the date
7 changes, he will let you know. Otherwise, I will see you on
8 June 27. OK?

9 THE DEFENDANT: OK.

10 THE COURT: Good luck to you.

11 THE DEFENDANT: Thank you.

12 THE COURT: I will see you then.

13 Let me thank the marshals, and let me thank the court
14 reporter as well.

15 MR. DRATEL: Your Honor, I just don't recall if it is
16 in your individual rules as to how far in advance of sentence--

17 THE COURT: It is. I think I generally like the
18 defense submission two weeks before, and the government's a
19 week before, so I can then have a week to read everything and
20 think about it. There is usually a weekend in there, so that
21 is usually when I do a lot of my thinking on sentencing.

22 Less than that, I don't feel I have enough time to
23 devote to it. There is nothing more important than sentencing,
24 Mr. Basciano. So I take it seriously. You can also
overprepare in advance, and so generally I find that time works
for me. OK. Great. Have a good day.

25 (Adjourned)